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IN THE

Supreme Court of the United States

October Term, 1970
No. 984

UNITED CONCRETE PIPE CORPORATION, SMITH-SCOTT, INC., KAISER STEEL CORPORATION, UNITED STATES STEEL CORPORATION, U.S. INDUSTRIES, INC., all corporations,

Petitioners,

vs.

MARICOPA COUNTY, a body politic, *et al.*,

Respondents.

Petitioners' Reply to Brief in Opposition.

Respondent Maricopa County, in its opposing brief, ignores the serious issues raised in the petition herein, misstates the law with respect to one of the issues decided below and misstates the record below. Instead of examining legislative history with respect to Section 5(b) of the Clayton Act and the specific issues regarding that statute that have been determined by the courts, Maricopa County asserts that it should prevail because "the sole reason for Section 5 of the Clayton Act was to stimulate private anti-trust suits and aid private suitors."[1] Such an approach is tantamount to a statement that all questions with respect to Section 5 must be resolved in favor of plaintiffs. Although Maricopa County's sim-

[1]Maricopa's Brief in Opposition, p. 4. See also, Maricopa's Answering Brief below, pp. 8-9.

plistic approach has the virtue of eliminating the need for painstaking research and legal analysis, it ignores the fact that the decision below will seriously curtail settlement of antitrust suits. Maricopa County's statement of antitrust "policy" notwithstanding, the practical importance of settlement of antitrust cases and the effect thereon of the decision below warrant definitive resolution by this Court of the issues raised in the petition.

Maricopa County has attempted to show that there is no conflict between the Circuits as to whether the filing of a Government antitrust action tolls the statute of limitations as to parties who are named therein as co-conspirators, but not as defendants. It points out that "only two Circuit Courts of Appeals subsequent to *Leh* and *3M* have ruled" on that issue, and they are in agreement that the statute is tolled as to non-defendants. However, as Maricopa County concedes, the Seventh Circuit Court of Appeals in *Hazeltine Research, Inc. v. Zenith Radio Corporation*, 418 F.2d 21 (7th Cir. 1969), specifically stated "that the law of this circuit is that the tolling of the limitation protects a plaintiff in a private antitrust suit only with respect to a party defendant in the Government suit."[2] Although that statement is dictum, it cannot be disregarded because it demonstrates that Circuit's intent to adhere to its prior decisions and because it states the rule followed by the District Courts in that Circuit. See, for example, *Century Hardware Corp. v. Powernail Co.*, 282 F.Supp. 223, 228-229 (E.D. Wis. 1968).

Maricopa County also misstates the record with respect to the question of whether Section 5(b) tolls the statute of limitations as to an action for damages by a

[2]418 F.2d at 25, n. 3.

governmental entity. That point was raised before the District Court[3] and presented in the brief to the Ninth Circuit.[4] It is now properly before this Court.

For the foregoing reasons, it is apparent that Maricopa County's Brief in Opposition is incorrect, and this Court should, for the reasons set forth in the petition herein, grant *certiorari*.

Respectfully submitted,

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December 28, 1970.

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[3]Transcript of Proceedings, June 16, 1969, pp. 30-31.
[4]Appellants' Opening Brief, p. 34, n. 51.